

32692  
Customer Number

Patent  
Case No.: 59010US002

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

First Named Inventor: FLANNIGAN, PAUL J.  
Application No.: 10/719959 Confirmation No.: 3577  
Filed: November 21, 2003  
Title: RESPIRATORY FACEPIECE AND METHOD OF MAKING A FACEPIECE  
USING SEPARATE MOLDS

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**COMMUNICATION TO BOARD OF PATENT APPEALS AND INTERFERENCES**

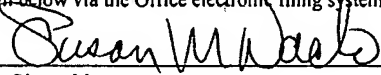
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**CERTIFICATE OF TRANSMISSION [37 CFR § 1.8(a)]**

I hereby certify that this correspondence is being transmitted to United States Patent and Trademark Office on the date shown below via the Office electronic filing system.

July 11, 2008

Date

  
Signed by: Susan M. Dacko

Dear Sir:

On May 15, 2008, the Examiner sent applicants the Examiner's Answer in the above-noted patent application. In this document, the Examiner refused to enter a rejection under 35 USC § 132(a) for claiming subject matter that involves new matter. Accordingly, the only issue pertaining to new matter is an objection to the specification, which only is petitionable to the Commissioner. Because the new matter issue pertains to the definition of claim terminology, which in turn has a bearing on the outstanding anticipation and obviousness rejections, the applicants request that the Board stay any decision on appeal until applicants can get a ruling from the Commissioner on the new matter issue.

Applicants further ask that the issuance of such a stay enable applicants to file a timely Reply Brief post decision on the Petition to the Commissioner. In taking the position outlined above, the Examiner has stated that "the Board should consider the original definition of 'fluid communication component'". Applicants, of course, are not interested in having the Board issue a decision based on an old definition of the term "fluid communication component". Section 112 of Title 35 provides applicants with the right to claim the "subject matter which the applicant regards as his invention". If the Board were to adopt the Examiner's suggestion with respect to which definition to use in evaluation claim scope, the Board would be making a ruling on claimed subject matter that the applicant does not regard as their invention. Such a decision would be in conflict with the express wording of 35 USC § 112, second paragraph. Further, a



decision rendered on subject matter that the applicant is not interested in claiming would be a waste of resources for the United States Patent and Trademark Office.

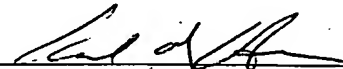
Applicants intend to file a petition with the Commissioner shortly.

Respectfully submitted,

July 11, 2008

Date

By:



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